

REMARKS

In the Office Action the Examiner requires Applicant to elect between Group I, consisting of claims 1-4, 22-24 (drawn to a method of manufacture of a medicament), Group II, consisting of claims 8-11 and 25-28 (drawn to a method of treatment), and Group III, consisting of claims 16-19 and 29-30 (drawn to a composition). Applicants hereby elect the claims of Group II (claims 8-11 and 25-28) with traverse.

The Examiner required restriction in view of a prior patent issued to Patrick, U.S. Patent No. 5,496,827 ("Patrick"). The Examiner stated that "a review of [Patrick] makes clear that the claimed species is not novel over the prior art." The Examiner further supported the restriction requirement by stating that "these references [presumably Patrick] appear to demonstrate that the claimed invention does not define a contribution which each of the inventions, considered as a whole, makes over the prior art."

The instant application is a national stage application of a PCT filing. Therefore, pursuant to MPEP §1893.03(d), to support the requirement for restriction, the Examiner must demonstrate that the claim groupings identified lack unity of invention. See also 37 C.F.R. §1.499. In this regard, the Examiner must explain why each group identified lacks a single general inventive concept.

Instead of identifying a lack of any single general inventive concept in each group, the Examiner opines, without support or detail, that the claims lack novelty. The Examiner somehow reaches this conclusion *in advance of any action on the merits* (See MPEP §810). Although the claims do not stand rejected as lacking novelty, the Examiner's mere assertion that the claims lack novelty serves to immediately and totally strip away any "special technical

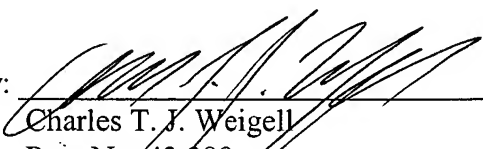
features” common thereto. The requirement for restriction is therefore not based on any lack of unity of invention, rather it is based on the Examiner’s disregard of the unity of invention. The requirement is therefore substantively and procedurally improper.

Applicant strenuously objects both to the Examiner’s argument supporting restriction and to her unsupported contention of lack of novelty. The Examiner’s restriction requirement improperly ignores elements of the claims that clearly should be considered in determining unity of invention, thus distorting the meaning and intent of PCT Section 13.2. Just as the Examiner has not issued a rejection of the claims on the merits, the Examiner has provided no support for restriction.

Applicant reserves the right under U.S. Patent laws to prosecute the unclaimed subject matter in divisional, continuation or continuation-in-part applications at a later time.

Respectfully submitted,

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(Date of Deposit)

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Name of applicant, assignee, or
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Signature

2/14/03

Date of Signature